IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13185 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PURSHOOTAMDAS H SHAH & 11 - Petitioners

Versus

KAPADWANJ NAGARPALIKA & 2 - Respondents

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Appearance :

MR BR PARIKH for Petitioners : 1 - 3, 3.2.1, 3.2.2, 3.2.3, 3.2.4,3.2.5 - 11, 11.2.1,11.2.2 - for Petitioners :
MR VC DESAI for Respondent : 1,
Mr. K.P. Raval, Ld. APP for Respondents : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 26/12/2005

ORAL JUDGMENT

Heard learned counsels for the respective parties.

1. The petitioners have challenged the action of the Respondent No.1 Kapadwanj Nagarpalika in not extending

the benefit of Resolution dated dated 30/7/1991 to all the retired employees of Nagarpalika and confining it only to the employees in service or to be retired after 1/8/1991, as discriminatory, arbitrary and unconstitutional.

2. The petitioners were employees of Respondent no.1 Nagarpalika holding different positions as mentioned in Annexure-A at page-16 of the petition. The date of joining and date of retirement of petitioners have been mentioned at Annexure-A at page-16, and their respective date of retirement have also been mentioned in the affidavit-in-rely by Nagarpalika on page-31. The petitioner No. 12 had retired on 16/12/1987. The petitioner No.3 and 11 died during pendency of this petition, hence their legal heirs have been brought on record, and permitted to prosecute this petition.

3. The petitioners have mainly relied on the ratio in case of MR. D.S. NAKARA & ORS. VS. UNION OF INIDA, reported in AIR 1983 S.C. pg. 130 in support of their submission that the respondent Nagarpalika ought not to have confined the benefit of new Pension Scheme only to the employees retired on 1/8/1991 or thereafter. The

employees retiring prior to 1/8/1991 ought to have been given benefit of new Pension Scheme. It has been submitted on behalf of the petitioners that the petitioners and other similarly situated persons were governed by the Contributory Provident Fund Scheme which was in existence prior to 1/8/1991. It is submitted on behalf of the petitioners that all the petitioners were ready & wiling to pay back the monetary benefits which they had received under Contributory Provident Fund Scheme for being eligible to avail the benefit of new Pensionary Scheme that was introduced vide Resolution dated 30/7/1991 whereunder the date of introduction of the Scheme is fixed as on 1/8/1991, meaning thereby the employee of Nagarpalika who is retiring on 1/8/1991 or thereafter was entitled to the benefit of new Pension Scheme.

4. Shri. Parikh, learned counsel for the petitioners has vehemently submitted that the denial of the benefit of new Pension Scheme to the petitioners would amount to hostile discrimination against the erstwhile employees of Kapadwanj Nagarpalika. Shri. Parikh has submitted that the arbitrary fixation of date 1/8/1991 for introduction of the new Pension Scheme has worked

against the interest of erstwhile employees of the Kapadwanj Nagarpalika. Shri. Parikh has submitted that the arbitrary fixation of date of introducing new Scheme i.e. 1/8/1991 has no reasonable nexus to the object to be achieved, and therefore, this amounts to impermissible classification directly hit by the provision of Article 14 of the Constitution of India. Shri. Parikh has also relied upon a judgment of this Court reported in 30 (2) GLR pg. 1068 and another judgment reported in 28 (1) GLR at page 389 in support of his contention. Shri. Parikh has submitted that it was incumbent upon the respondent Kapadwanj Nagarpalika to atleast invite option from the retired employees of the Kapadwanj Nagarpalika as to whether they were interested in opting for new Pension Scheme which was being introduced from 1/8/1991 by the Kapadwanj Nagarpalika. As Kapadwanj Nagarpalika has not invited such options from its erstwhile employees there is a clear violation of provisions of Article 14 and 16 of the Constitution of India.

5. The Kapadwanj Nagarpalika has filed detailed affidavit-in-reply affirmed by one Shri. Mohmed Yusuf Ismail Vohra on 20/11/1997. Kapadwanj Nagarpalika has

also narrated the year of retirement of the petitioners. In respect of petitioner no.12 it is not disputed that his date of retirement is 16/12/1987. Kapadwanj Nagarpalika – Respondent No. 1 herein has taken a stand that the petition is misconceived as the introduction of Pension Scheme from a particular date was well within its right and it can not be said to be any way discriminatory against the erstwhile employees of Nagarpalika. It is further submitted on behalf of Nagarpalika that petitioners were beneficiaries of the then scheme of Contributory Provident Fund and they have received all their retiral dues thereunder. The Contributory Pension Scheme and the Pension Scheme are two different and distinct Schemes. The petitioners have received the retiral dues as it is stated herein above under the Contributory Provident Fund Scheme and when the Pension Scheme was being introduced w.e.f. 1/8/1991 the respondent Nagarpalika did not owe any obligation towards its erstwhile employees like the petitioners who had retired long back and who have received their retiral dues and benefits under Contributory Provident Fund Scheme. The new Scheme of Pension was required to be introduced as it was being introduced in all other Nagarpalikas. The Resolution to

this effect came to be passed on 30/7/1991 making it effective from 1/8/1991. The said Scheme of Pension was introduced only after receiving the appropriate sanction from the Government of Gujarat vide its letter dated 24/7/1991. The copy of the new Scheme is at Annexure-C to the affidavit-in-reply. It was submitted on behalf of the Nagarpalika that when the new Pension Scheme was introduced the petitioners had already retired.

6. Shri. Desai, learned counsel for respondent Nagarpalika has submitted that the ratio laid down in the Apex Court decision in case of D.S. Nakara And Others V. Union of India, AIR 1983 S.C. pg. 130 would have no application in the facts & circumstances of the present cass. Shri. Desai has further submitted that the ratio laid down by the Apex Court in case of TAMIL NADU ELECTRICYT BOARD V. R. VEERASAMY AND OTHERS, reported in 1999 AIR SCW 1505 will squarely govern the facts of the present case. He especially invited this Court's attention to para-6 of the judgment in support of this submission that introduction of Pension Scheme w.e.f. 1/8/1991 can not be in any way said to be discriminatory against the erstwhile employees like

petitioners of Nagarpalika.

7. Shri. Raval, learned AGP has submitted that the impugned decision to introduce Scheme of pensionary benefits in place of Contributory Provident Fund from 1/8/1991 to the employees of Nagarpalika is just and proper and it can not be said to be discriminatory.

8. This Court has perused the material on record and heard learned counsels of the respective parties at length. The submission made on behalf of the petitioners that on the basis of the principle enunciated in case D.S. Nakara (supra) the action impugned in the present petition deserves to be quashed and set aside, is misconceived, untenable in eye of law and therefore, deserves to be rejected. The facts in respect of present petitioners and those in case of D.S Nakara are substantially different. The principle enunciated in case of D.S. Nakara would have no applicability in the facts & circumstances of the present case. In case of D.S. Nakara it was a discrimination within the class of pensioners, whereas in the present case, there is no such discrimination as alleged. The petitioners can not claim any parity or

equity with the employees in service of Nagarpalika and those who are going to be retired after the appointed date i.e., 1/8/1991. The petitioners and similarly situated other persons form a different class altogether and they can not be, as it is stated herein above, equated with the employees of Nagarpalika who were to retire after 1/8/1991. The impugned action of Nagarpalika can not be said to be perpetrating any discriminatory treatment within a homogeneous class. One needs to bear in mind a clear distinction between the persons like petitioners who are beneficiaries of the Provident Fund Scheme and the employees of Nagarpalika who were to retire after 1/8/1991 and who were to get the benefit of pension scheme. The Apex Court has in case of KRISHENA KUMAR Vs. UNION OF INDIA AND OTHERS, reported in AIR 1990 S.C. pg. 1782 has explained in terms that the pension retirees and P.F. Retirees do not form one homogeneous class. The relevant observation deserves to be set out as under :

> " 30. In Nakara (AIR 1983 SC 130) it was never held that both the pension retirees and the P.F. Retirees formed a homogeneous class and that any further classification among them would be violative of Art. 14. On the other hand the Court clearly observed

that it was not dealing with the problem of a “fund”. The Railway Contributory Provident Fund is by definition a fund. Besides, the Government's obligation towards an employee under C.P.F. Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand under the pension Scheme the Government's obligation does not begin until the employee retires when only it begins and it continues till the death of the employee. Thus, on the retirement of an employee Government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins. The rules governing the Provident Fund and its contribution are entirely different from the rules governing pension. It would not, therefore, be reasonable to argue that what is applicable to the pension retirees must also equally be applicable to P.F. retirees. This being the legal position the rights of each individual P.F. retiree finally crystallised on his retirement whereafter no continuing obligation remained while, on the other hand, as regards pension retirees, the obligation continued till their death. The continuing obligation of the State in respect of pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the P.F. retirees they

would not be so adversely affected ipso facto. It cannot, therefore, be said that it was the ratio decidendi in Nakara that State's obligation towards its P.F. retirees must be decided questions. Apart from Art. 141 of the Constitution of India, the policy of courts is to stand by precedent and not to disturb settled point. When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same. A deliberate and solemn decision of Court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same Court, or in other Courts of equal or lower rank in subsequent cases where the very point is again in controversy unless there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. It should be invariably applied and should not ordinarily be departed from where decision is of long stand and rights have been acquired under it, unless considerations of public policy demand it. But in Nakara it was never required to be decided that all the retirees formed a class and no further classification was permissible.

31. The next argument of the petitioners is that the option given to the P.F. Employees to switch over to the pension scheme with effect from a specified cut-off date is bad as violative of Art. 14 of the

Constitution for the same reasons for which in Nakara the notification were read down. We have extracted the 12th option letter. This argument is fallacious in view of the fact that while in case of pension retirees who are alive the Government has a continuing obligation and if one is affected by dearness the others may also be similarly affected. In case of P.F. retirees each one's rights having finally crystallised on the date of retirement and receipt of P.F., benefits and there being no continuing obligation thereafter they could not be treated at par with the living pensioners. How the corpus after retirement of a P.F., retiree was affected or benefited by prices and interest rise was not kept any track of by the Railways. It appears in each of the cases of option the specified date bore a definite nexus to the objects sought to be achieved by giving of the option. Option once exercised was told to have been final. Options were exercisable vice versa. It is clarified by Mr. Kapil Sibal that the specified date has been fixed in relation to the reason for giving the option and only the employees who retired after the specified date and before and after the date of notification were made eligible. This submission appears to have been substantiated by what has been stated by the successive Pay Commission. It would also appear that corresponding concomitant benefits were also granted to the Provident Fund holders. There was, therefore, no discrimination and the question of striking down or reading down Cl.3.1 of the 12th option does not

arise. “

Thus, it can well be said that the P.F., retirees and Pension retirees do not form a homogeneous class. In the instant case also the persons like petitioners who belong to the P.F. retiree class, therefore can not claim any discriminatory treatment when they are not made entitled to receive benefit of pension scheme w.e.f. 1/8/1991.

9. The Apex Court has in case of ALL INDIA RESERVE BANK RETIRED OFFICERS ASSOCIATION AND OTHERS Vs. UNION OF INDIA AND ANOTHER, reported in 1992 Supp (1) SCC pg. 664, explained the distinction between Pension Scheme and Contributory Provident Fund Scheme and held that, there is no substance in the allegation that the cut off date have been arbitrarily fixed by the authorities while giving its approval or that it was devoid of rational consideration when it did not include the retirees earlier than January 1986. The observations of the Apex Court in the aforesaid case was made after considering D.S. Nakara case.

10. It would be appropriate to refer to the decision of

the Apex Court in case of HARI RAM GUPTA (DEAD) THORUGH L.R. KASTURI DEVI Vs. STATE OF U.P., reported in (1998) 6 SC pg. 328. Wherein also the principle laid down in case of D.S. Nakara was discussed. The relevant observations deserves to be set out as under:

> “9. The only other question that survives for our consideration is whether the ratio in Nakara case will assist the appellant in getting the relief sought for. In D.S. Nakara v. Union of India the question for consideration before this Court was whether on the basis of date of retirement the retirees can be classified into different groups and thereupon make provision granting some benefits to one group denying the others. In the aforesaid case, the provisions for pension were applicable to all retirees and, therefore, pensioners form a class as a whole. But when the Liberalised Pension Scheme was introduced, the said Scheme was made applicable to a group of pensioners and not to all and therefore, it was held by this Court that pensioners form a class as a whole and cannot be micro-classified by an arbitrary, unprincipled and unreasonable eligibility criterion. It is to be noted that the aforesaid judgment was considered by this Court in the subsequent Constitution Bench judgment of Krishna Kumar v. Union of India wherein the decision of Nakara was explained and it was held that the pension retirees and provident fund retirees do not form one homogeneous class and on the other hand,

the Rules governing the provident fund and its contribution are entirely different from the Rules governing pension and, therefore, it would not be reasonable to argue what is applicable to the pension retirees must also equally be applicable to provident fund retirees. It was further held in the aforesaid case that the rights of each individual retiree finally crystallised on his retirement whereafter no continuing obligation remained in case of those who are governed by Provident Fund Rules whereas in case of pension retirees, the obligation continues till the death of the employee. This Court categorically held that Nakara cannot be an authority for the decision in Krishna Kumar. In Union of India v. P.N. Menon a similar question came up for consideration and distinguishing Nakara and following Kirshna Kumar and other similar cases, the Court held that whenever the Government or an authority, which can be held to be a State within the meaning of Article 12 of the Constitution, frames a scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such, any revised scheme in respect of post-retirement benefits, if implemented with a cut-off date, which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid. Whenever a revision takes place, a cut-off date becomes imperative because the benefit has to be allowed within the financial resources available

with the Government. When the army personnel claimed the same pension irrespective of their date of retirement, this Court in the Constitution Bench case of the Indian Ex-services Leave v. Union of India considered the grievance of ex-servicemen who had laid the claim on the basis of Nakara but ultimately negatived the same and followed Krishna Kumar. In All India Reserve Bank Retired Officers Assn. v. Union of India when the validity of the introduction of Pension Scheme in lieu of Contributory Provident Fund Scheme was challenged on the ground that bank employees who retired prior to 1/1/1986 have not been given the benefit of the said Scheme, it was held by this Court that there is no arbitrariness in the same. “

Thus the petitioners can not complain that they have been discriminated against by the respondent.

11. The decision of the Apex Court relied upon in case of TAMIL NADU ELECTRICITY BOARD V. VEERASAMY AND OTHERS, reported in 1999 AIR SCW 1505 by Shri. Desai, learned counsel for the respondent Nagarpalika also deserves to be noted in view of the fact that, the case of D.S. Nakara was considered and it was decided by the Apex Court that the board had not acted illegally or contrary to law introducing the Pension Scheme prospectively from 1/7/1986 and that the employees /

respondents retired before 1/7/1986 can not compel the appellant Board to extend the benefit of newly introduced pension scheme with retrospective effect.

12. The decision of this Court relied upon by the petitioners in case of 30 (2) GLR pg. 1068 and 28(1) GLR pg. 389 are of no avail to the petitioners as they are on an entirely different facts & circumstances. In the present case the question of introducing new scheme from the appointed date in respect of set of employees retiring on or after the appointed day i.e. 1/8/1991 is challenged by the beneficiaries of the erstwhile P.F. Scheme which has in terms time and again negatived by the Apex Court in the cases referred to herein above. Whereas in the cases relied upon by the petitioners the question was that of discrimination between the homogeneous class of pensioners itself. Therefore, those two cases are on different facts and therefore reliance thereof by the petitioners is of no avail.

13. The present petitioners and other similarly situated persons have no right whatsoever to claim pensionary benefit only on the basis of the fact that they were once upon a time employees of the Nagarpalika. As it is

stated herein above, by sheer operation of the Contributory Provident Fund Scheme, on their attaining the age of superannuation they had received their retiral dues and since then the relationship of employer and employee came to an end. The obligation of Nagarpalika came to an end so far as these employees are concerned. In view of this, the petitioners can not complain a discriminatory treatment. In view of this, the point of agitation on the part of the petitioners deserve to be rejected. The petition, therefore, fails and accordingly it is dismissed with no order as to costs. Rule discharged.

[S.R. BRAHMBHATT, J]

/vgn